IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR

S. B. CIVIL MISC. APPEAL NO. 1210 / 2003

Chagan Lal v. Smt. Beena Sharma & Ors.

Date of Judgment: 4th May, 2007

Hon'ble Mr. Justice R. S. Chauhan

Dr. P. C. Jain for the Appellant
Mr. R. P. Garg for the Respondents.

(Per Court):

The battle between the landlord and the tenant has brought the parties before this court. The appellant—the tenant in this case—is challenging the order dated 6-2-2003, passed by the District Judge, Dausa whereby the learned Judge has, after framing an issue under Order 41, Rule 25 of the Civil Procedure Code, ('the Code', for short), remanded the case to the learned trial court for deciding the issue within six months.

In a nutshell, the facts of the case are that on 1-1-1973, the appellant had rented out a shop, measuring 20' x 12' from the respondents ('the landlord', for short) for a monthly rent of Rs. 90/-. Subsequently, the rent was increased to Rs. 120/- per

month from 1-1-1975. Later on, the landlord filed a suit for eviction against the appellant on the ground of bona fide necessity and on default of payment of rent. The appellant filed his written statement and denied the averments made in the plaint. According to the appellant, the landlord had about twenty shops which were rented out. The landlord was litigating with the other tenants also in order to pressurize them to increase the rent. There was no bona fide necessity on the part of the landlord for the shop in question. After going through the pleadings of the parties, the learned trial court framed four issues as under:

"1.आया वादीगण को वादग्रस्त दुकान की वास्तविक व निजी आवश्यकता है ?

2. आया दुकान खाली न कराने की सूरत में वादीगण को प्रतिवादीगण के मुकाबले तुलनात्मक कठिनाई अधिक होगी?

3. आया दिनांक 1.1.71 से प्रतिवादी ने किराया 120 रू. माहवार कर दिया था तदनुसार वादी से पाने का अधिकारी है?

3/ए क्या प्रतिवादी ने माह फरवरी 1980 से जुलाई 1980 तक सात माह का किराया व हर्जा वादी को अदा न करके किराया अदायगी में डिफाल्ट की है?

4. अनुतोष?"

After going through the oral and documentary evidence, the learned trial court held that there was no bona fide necessity of the landlord and the factor of comparative hardship was also in favor of the tenant. Therefore, vide order dated 26-10-1993, the learned trial court dismissed the suit. Since the order dated 26-10-1993 aggrieved the landlord, they filed an appeal before the learned Judge. Vide order dated 6.2.03 the learned Judge remanded the case back to the learned trial court after framing the issue whether the bonafide necessity of the landlord can be fulfilled by the partial eviction of the tenant or not ? The learned Judge directed the trial court to decide the said issue within a period of six months from the date of the order. Since the appellant is aggrieved by the said order, he has submitted the present appeal before this court.

Dr. P.C. Jain, the learned counsel for the appellant has argued that Section 14 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 ('the Act' for short) dealing with

restriction on eviction has not been appreciated in the proper perspective by the learned Judge. According to the learned counsel, before the issue of partial eviction of the tenant can be raised, the landlord must prove, by cogent evidence, his bonafide necessity. In case the trial court were to conclude that there is no bonafide necessity of the landlord for the premises in question, then the trial court need not enter into the issue of partial eviction of the tenant from the said premises. In the present case since the learned trial court had concluded that the landlord had failed to establish his bonafide necessity, the learned trial court was justified in not entering into the issue of partial eviction. Secondly, even the appellate court has not come to the conclusion and has not upset the finding of the trial court on the point of lack of bonafide necessity of the landlord. Instead, in a mechanical manner, it has held that the trial court has committed an error in not framing the issue with regard to the partial eviction of the tenant. And on this non-framing of issue, it has remanded the case back to the learned trial court. Thirdly, that the power of remand as granted under Section 107 and elaborated under Order 41 Rule 23 to 29 is to be used

sparingly. Instead of framing the issue itself, instead of recording the evidence on the said issue itself, the learned Judge has mechanically invoked the power of remand and has remanded the case back to the learned trial court.

On the other hand, Mr. R.P. Garg, the learned counsel for the respondents, has vehemently argued that according to Section 14 (2), the trial court is legally bound to frame an issue with regard to the partial eviction of tenant for fulfilling the bonafide necessity of the landlord. According to the learned counsel, it is a mandatory duty to frame the issue with regard to partial eviction. Since the learned trial court had failed to frame the issue of partial eviction, the learned Judge has validly remanded the case back to the learned trial court. In order to support his contention, the learned counsel has relied upon the case of Krishna Murari Prasad v Mitar Singh (AIR 1994 SC 489), Rehman Jeo Wangnoo v Ram Chand & Ors. (AIR 1978 SC 413) and Riyaz ohammad v Rameshwar (1989 (1) RLW, 95).

The issue before this court is whether Section 14(2) of the Act is mandatory in nature or not ? Secondly, whether in case the landlord does not set up the ground of partial eviction, whether in such a case the trial court is still required to frame an issue about partial eviction of tenant from the premises or not ?

These two issues are no longer res integra. For, they have been authoritatively decided by the Hon'ble Supreme Court in the case of Rehman Jeo Wangnoo (supra). In the said case there was no specific pleading with regard to the satisfaction of the bonafide necessity of the landlord by the partial eviction of the tenant, still the Hon'ble Supreme Court held that “we are satisfied that the proviso aforesaid mandates the Court to consider whether partial eviction as contemplated therein should be ordered or the entire holding should be directed to be evicted. This aspect, therefore, requires judicial exploration after giving opportunity to both sides to lead evidence in this behalf..... The court must proceed on the footing that the absence of specific pleading under the said

proviso does not stand in the way of the obligation to the court to act in compliance with the mandate of the Statute." Similarly, in the case of Riyaz Mohammad (supra), this court relying on the case of Rehman Jeo Wangnoo(supra) has held that it was mandatory for the trial court to frame an issue and to decide the same even if no specific pleading on this point existed. Therefore, the learned Judge was certainly justified in holding that the trial court should have framed the issue with regard to partial eviction of the tenant.

However, both in the case of Rehman Jeo Wangnoo (supra) and in the case of Riyaz Mohammad (supra) the learned lower appellate court has been directed to decide the issue itself, rather than sending it back to the trial court. In the case of Niranjan lal Vs. UIT Alwar (2007 (1) WLC (Raj.) 574) this court had an occasion to elaborately discuss the ambit and scope of Section 107 and Order 41, Rules 23 to 29 of the Code. This court clearly held that since the power to frame issues, the power to take additional evidence on the said issue lies with the lower appellate court, therefore, the lower

appellate court should frame the issue and decide the same after recording the necessary evidence.

Therefore, while this court agrees that the issue of partial eviction of the appellant needs to be examined and decided, this Court directs the learned Judge to call for the record from the trial court and to record the evidence on the issue of partial eviction framed by it within a period of six months from the date of the receipt of the certified copy of this order.

Accordingly this appeal is disposed of with the above-mentioned observations. There shall be no order as to costs.

R.S. CHAUHAN, J.

MRG.